

FILED

JUN 21 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CARMELITA REEDER SHINN, CLERK
U.S. DIST. COURT, WESTERN DIST. OKLA.
BY 10 DEPUTY

Brian K. Neugebauer,

(Enter the full name of the plaintiff.)

CIV 21 0638 JD

v.

Case No. F-2020-507
(Court Clerk will insert case number)

(1) The State of Oklahoma,

(2) Judge Scott Meaders,

(3) District Attorney Jill Oliver.

(Enter the full name of each defendant. Attach additional sheets as necessary.)

PRO SE PRISONER CIVIL RIGHTS COMPLAINT

Initial Instructions

1. You must type or legibly handwrite the Complaint, and you must answer all questions concisely and in the proper space. Where more space is needed to answer any question, you may attach a separate sheet.
2. You must provide a full name for each defendant and describe where that defendant resides or can be located.
3. You must send the original complaint and one copy to the Clerk of the District Court.
4. You must pay an initial fee of \$402 (including a \$350 filing fee and a \$52 administrative fee). The complaint will not be considered filed until the Clerk receives the \$402 fee or you are granted permission to proceed *in forma pauperis*.
5. If you cannot prepay the \$402 fee, you may request permission to proceed *in forma pauperis* in accordance with the procedures set forth in the Court's form application to proceed *in forma pauperis*. See 28 U.S.C. § 1915; Local Civil Rule 3.3.

- If the court grants your request, the \$52 administrative fee will not be assessed and your total filing fee will be \$350.
- You will be required to make an initial partial payment, which the court will calculate, and then prison officials will deduct the remaining balance from your prison accounts over time.
- These deductions will be made until the entire \$350 filing fee is paid, **regardless of how the court decides your case.**

7. The Court will review your complaint before deciding whether to authorize service of process on the defendants. *See* 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c)(1). If the Court grants such permission, the Clerk will send you the necessary instructions and forms.

8. If you have been granted permission to proceed *in forma pauperis*, the United States Marshals Service will be authorized to serve the defendants based on information you provide. If you have not been granted permission to proceed *in forma pauperis*, you will be responsible for service of a separate summons and copy of the complaint on each defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT

I. Jurisdiction is asserted pursuant to:

X 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a)(3) (NOTE: these provisions generally apply to state prisoners), or

____ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and 28 U.S.C. § 1331 (NOTE: these provisions generally apply to federal prisoners)

If you want to assert jurisdiction under different or additional statutes, list these below:

II. State whether you are a:

- ☒ Convicted and sentenced state prisoner
☐ Convicted and sentenced federal prisoner
☐ Pretrial detainee
☐ Immigration detainee
☐ Civilly committed detainee
☐ Other (please explain) _____

III. Previous Federal Civil Actions or Appeals

List each civil action or appeal you have brought in a federal court while you were incarcerated or detained in any facility.

1. Prior Civil Action/Appeal No. 1

a. Parties to previous lawsuit:

Plaintiff(s): Brian Keith Neugebauer

Defendant(s): The State of Oklahoma

b. Court and docket number: Case No. F-2020-507

c. Approximate date of filing: December 3rd 2020

d. Issues raised: Propositions 1 thru 6

(see attachment on next page.)

e. Disposition (for example: Did you win? Was the case dismissed? Was summary judgment entered against you? Is the case still pending? Did you appeal?): The case is still pending.

f. Approximate date of disposition: 6-11-2021

If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on a separate sheet(s).

Attachment

Proposition One: The conduct of the decedent was the sole proximate cause of her death.

Proposition Two:

The Magistrate improperly overruled the demurer to the evidence at the conclusion of the preliminary hearing.

Proposition Three:

The trial court improperly overruled the motion to quash.

Proposition Four:

The evidence was insufficient to sustain the conviction of Appellant.

Proposition Five:

Prejudicial testimony about a cell phone call after the accident was improperly admitted by the trial court.

Proposition Six:

Refusal to consider probation.

IV. Parties to Current Lawsuit

State information about yourself and each person or company listed as a defendant in the caption (the heading) of this complaint.

1. Plaintiff

Name and any aliases: Brian Keith Neugebauer (Cody Bill)

Address: D.C.C.C. 129 Conner Road Hominy, Okla. 74035.

Inmate No.: B55213

2. Defendant No. 1

Name and official position: The State of Oklahoma

Place of employment and/or residence: Comanche County Courthouse

315 S.W. 5th St. Ste. 504

How is this person sued? () official capacity, () individual capacity, (X) both

3. Defendant No. 2

Name and official position: Judge Scott Meaders

Place of employment and/or residence: Comanche County Courthouse

315 S.W. 5th St. Ste. 504

How is this person sued? () official capacity, () individual capacity, (X) both

If there are more than two defendants, describe the additional defendants using this same format on a separate sheet(s).

IV. Parties to Current Lawsuit

State information about yourself and each person or company listed as a defendant in the caption (the heading) of this complaint.

1. Plaintiff

Name and any aliases: Brian Keith Neugebauer (Cody Bill)

Address: D.C.C.C. 129 Conner Road Hominy, Okla. 74035

Inmate No.: 855213

2. Defendant No. 3

Name and official position: District Attorney Jill Oliver

Place of employment and/or residence: Comanche County Courthouse
315 S.W. 5th St. Ste 504

How is this person sued? () official capacity, () individual capacity, (☒) both

3. Defendant No. 4

Name and official position: _____

Place of employment and/or residence: _____

How is this person sued? () official capacity, () individual capacity, () both

If there are more than two defendants, describe the additional defendants using this same format on a separate sheet(s).

V. Cause of Action

Instructions

1. *Provide a short and plain statement of each claim.*
 - Describe the facts that are the basis for your claim.
 - You can generally only sue defendants who were directly involved in harming you. Describe how each defendant violated your rights, giving dates and places.
 - Explain how you were hurt and the extent of your injuries.
2. *You are not required to cite case law.*
 - Describe the constitutional or statutory rights you believe the defendant(s) violated.
 - At this stage in the proceedings, you do not need to cite or discuss any case law.
3. *You are not required to attach exhibits.*
 - If you do attach exhibits, you should refer to the exhibits in the statement of your claim and explain why you included them.
4. *Be aware of the requirement that you exhaust prison grievance procedures **before** filing your lawsuit.*
 - If the evidence shows that you did not fully comply with an available prison grievance process prior to filing this lawsuit, the court may dismiss the unexhausted claim(s) or grant judgment against you. *See* 42 U.S.C. § 1997e(a).
 - Every claim you raise must be exhausted in the appropriate manner.
5. *Be aware of any statute of limitations.*
 - If you are suing about events that happened in the past, your case may be subject to dismissal under the statute of limitations. For example, for many civil rights claims, an action must be brought within two years from the date when the plaintiff knew or had reason to know of the injury that is the basis for the claim.

6. *Do not include claims relating to your criminal conviction or to prison disciplinary proceedings that resulted in loss of good time credits.*
- If a ruling in your favor “would necessarily imply the invalidity” of a criminal conviction or prison disciplinary punishment affecting the time served, then you cannot make these claims in a civil rights complaint unless you have already had the conviction or prison disciplinary proceeding invalidated, for example through a habeas proceeding.

Claims

List the federal right(s) that you believe have been violated, and describe what happened. Each alleged violation of a federal right should be listed separately as its own claim.

1. Claim 1:

- (1) List the right that you believe was violated:

my right to a fair trial was violated with an
Illegal search and seizure of my cell phone, then
using the information illegally obtained during trial.

- (2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

The district Attorney Jill Oliver committed illegal actions
in order to get a conviction and the trial Judge allowed
it to happen, assuming a Judge knows the law as he
should.

(3) List the supporting facts:

no search warrant, issued by a magistrate for my cell phone, was included in discovery provided to counsel for me or any records filed in the case. Therefore inadmissible. Yet the prosecutor questioned me about the call record of phone and used the illegally seized info. and testimony in her closing argument denying my right to a fair trial.

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

Reverse the conviction, as well as the revoked deferred sentence revoked on this verdict. Clearing both felonies from my record, provide financial compensation for all damages, pain and suffering and wrongful imprisonment. Reprimand the Judge and District Attorney for their actions against the law.

2. Claim II:

(1) List the right that you believe was violated:

My right to counsel was violated with an improper comment on exercise of a Constitutional right.

(2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

The District Attorney committed this violation and the Judge allowed her to do so denying my civil rights, possibly putting doubt in the minds of the jury.

(3) List the supporting facts:

Questions by the prosecutor about cell phone calls made after the accident were irrelevant and immaterial and should not have been permitted by the Judge. In addition, they constituted impermissible comment on the exercise of a constitutional right by appellant - the right to counsel.

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

Reverse the conviction, as well as the deferred sentence revoked based on the verdict of this trial, clearing both felonies from my record and provide financial compensation for all damages including wrongful imprisonment and pain and suffering. Reprimand the Judge and District Attorney for breaking both State and Federal law.

If there are more than two claims that you wish to assert, describe the additional claims using this same format on a separate sheet(s).

VI. Declarations

I declare under penalty of perjury that the foregoing is true and correct.

Brian K. Neugebauer
Plaintiff's signature

6-11-2021
Date

I further declare under penalty of perjury that I placed this complaint in the prison's legal mail system, with the correct postage attached, on the 14th day of 6-14-June, 2021.

Brian K. Neugebauer
Plaintiff's signature

6-11-2021
Date